



Changing or Transferring an Existing Water Right

Since much of the water in Washington has already been allocated or claimed, it is increasingly difficult to obtain new water rights. As a result, many individuals are choosing to make changes to existing water rights in order to meet new water needs. The Department of Ecology may consider changes to the following elements of an existing water right:

- ◆ Place of use;
- ◆ Point of diversion or withdrawal;
- ◆ Additional point(s) of diversion or withdrawal; or
- ◆ Purpose of use (including season of use).

Water rights are generally represented by three different types of water right documents:

1. A water right ***claim*** is simply that – a ***claim*** to a water right for a beneficial use which predates the water-permitting system. (“Beneficial use” refers to a reasonable quantity of water applied to a non-wasteful use.) The validity of a claim has not been confirmed through administrative or judicial processes.

2. A ***permit*** is the first step towards securing a perfected water right. A water right is “perfected” when all of the terms and conditions associated with it have been fully accomplished. (Until then it is “conditional” or “unperfected.”) Under a permit, you are allowed to start construction of the water system and begin using water. With few exceptions, permits are required if you plan to withdraw water for any use from either surface waters (water above the ground) or ground waters (water under the ground).

3. You are issued a ***certificate*** when Ecology confirms that the water right

being developed is perfected. A Certificate of Water Right is the final legal record of your water right. Once a certificate is issued, the water right is considered “appurtenant” or attached to the land on which the water is used.

Some elements of a water right cannot be changed

Certain elements of a water right cannot be changed through the change process, such as increasing the instantaneous withdrawal rate or annual quantity.

There are also some limitations on changes that may be made, based on:

- ◆ the status of the water right (perfected or unperfected), and
- ◆ whether the right is to ground or surface water.

For example, the point of withdrawal and place of use of an unperfected ground water permit can usually be changed, but the purpose of use cannot be changed until the right has been perfected.

Water law in Washington is complex and is shaped by numerous statutes, administrative rules and case law. Consequently, the specific requirements for changing existing water rights can vary considerably across projects. For these reasons, you might want to contact an attorney and/or an Ecology representative to discuss your proposed project and clarify your options before deciding to apply for a water right change.

Transferring ownership of water rights

A change application should not be filed on a *certificate* for the sole purpose of adding the name of a new property owner. This is because water right certificates are already a part of a property’s legal record.

Water right *applications* or *permits* may be assigned to a new property owner. To be effective, these assignments must be filed with Ecology. This way, an application or permit remains valid and the person(s) owning it may continue to develop



water use(s) on the property. The assignment form is available at any Ecology office. The web address is listed at the end of this document.

Criteria for change decisions

Note: The terms “change” and “transfer” can be used interchangeably.

An application to change an existing water right (commonly referred to as a “change application”) must pass the following legal tests:

- ◆ The water right to be changed actually exists;
 - ◆ The change does not impair any existing rights;
 - ◆ The change is not detrimental to public welfare (for ground water rights only); and
 - ◆ The amount of water use determined in the right will not increase if additional acres are to be irrigated, or an additional purpose of use is added.
- In determining whether or not to approve a change application, Ecology will confirm that:
- ◆ The change does not increase the amount of water used, either instantaneously or annually;
 - ◆ The water right is eligible to be changed and the entire right, or a portion of the right, has not been abandoned or relinquished for non-use;
 - ◆ The source of water will not change;
 - ◆ The water is being put to beneficial use; and
 - ◆ The proposed use is not detrimental to public welfare.

Change applications are usually processed in the order received, within a particular water source. Exceptions to this process can occur under one of the following circumstances:

- ◆ Ecology determines that a change application is necessary for the preservation of public health or safety (usually through a request from the Department of Health);
- ◆ The proposed use is nonconsumptive (that is, a use in which only insignificant amounts of water are lost) and, if approved, the proposed use would substantially enhance or protect the quality of the natural environment;
- ◆ If approved, the change would result in providing public water supplies to meet the general needs of the public for regional areas; or
- ◆ The change was filed by water right holders participating in a court-supervised adjudication. Timely decisions are needed to ensure that county superior court orders will represent the current water use situation.



Additional factors in change decisions

In some cases, new conditions are placed in a water right as part of a decision to approve a change request. The new conditions are generally aimed at ensuring that the new use of the water right does not cause any additional impacts.

When Ecology considers a water

right change request, the agency is required by law to perform a tentative determination of the extent and validity of the water right. This involves looking back at the history of water use under the original water right. It may be determined that a water right has been entirely, or partially, relinquished (returned) back to the public waters of the state. This occurs if the water has not been used for a period of five or more years and no sufficient cause exists for the nonuse.

Changing an existing water right does not change the original *priority date*, that is, the effective date of the right. In the case of a water right represented by a permit or a certificate, the priority date is the date on which Ecology received the original application. In the case of a water right represented by a claim (water rights that predate the state's current water right laws), the priority date is when the water was first put to beneficial use.

The priority date is important because it determines the seniority of the water right. Washington water law is based on the concept of “first in time, first in right:” that is, an individual’s right to a specific quantity of water depends on the water right’s priority date. In times of shortage, senior water right holders have their water needs satisfied first.

How the standard change application process works

Note: You may choose to process your change application through Ecology or through your local Water Conservancy Board. The application process varies between the two. This document focuses only on Ecology. Conservancy Boards are discussed later in this document.

The process for making a change to an existing water right is similar to acquiring a new water right. The general steps in the change

application process are:

1. Contact Ecology's regional or field office nearest you for an "Application for Change/Transfer of Water Right," or download the application from Ecology's internet site (web addresses are listed at the end of this document).
2. Complete a change application form. Instructions are included. The minimum application fee is \$10, but additional fees may be required.
3. Return the completed application, with a check or money order for the application fee, to the Water Resources Program at the nearest Ecology regional office. Applications are handled primarily by the regional offices listed at the end of this document.
4. Ecology reviews each application for completeness. If additional fees are required, you will be notified at this time.
5. Once an application is accepted, Ecology will send you a *legal notice of application* to publish in a newspaper in the county (or counties) where the water is or will be withdrawn, stored, or



- used. The notice, published once a week for two consecutive weeks, includes:
- ♦ The basic facts of the existing water right and requested change(s), and
 - ♦ Information regarding the 30-day protest period for any member of the public who disagrees with the proposed change. The 30-day period begins on the last day the legal notice is published.
6. After final publication of the notice, send Ecology the original, notarized *Affidavit of Publication* which is obtained from the publishing newspaper. Ecology cannot take action until the affidavit has been received.
 7. Ecology then conducts an investigation of the application to validate the information. This includes gathering additional information to evaluate the existing and proposed uses of the water right. Ecology's investigation may include a field examination of the proposal.

In addition to the completed Application for Change, an applicant may be asked to send supplementary documentation regarding the proposed change, including:

 - ♦ Evidence that the water right has been put to continuous use. This may include pump records, meter readings, electrical records, photographs, or affidavits from neighbors.
 - ♦ Maps of the property included in the legal description of the changes and all proposed points of diversion/withdrawal.
 - ♦ Copies of agreements to share or transfer water rights between neighbors.

8. The results of Ecology's investigation are summarized in a *Report of Examination (ROE)*. The report contains Ecology's staff-level decision on the water right change request, including a recommendation to either approve or deny. Once approved by an Ecology decision-maker, the department issues either a final ROE or an Order approving the ROE. If approved, the final decision may contain specific conditions.
9. Ecology sends the applicant, anyone who filed a protest, and identified interested parties a copy of the final decision (either a final ROE or an Order approving the ROE). You (and others) then have 30 days to appeal Ecology's decision. Appeals are heard by the state's Pollution Control Hearings Board (PCHB).
10. If no appeals are filed, you can begin taking action on the requested change. This could be, for example, drilling a replacement well or implementing a change in the purpose of use. If there is an appeal to Ecology's final decision, the appealing party may request that the PCHB issue a stay of Ecology's decision. (A "stay" is a suspension or postponement of a legal decision.) If a stay is issued, you may not begin implementing your change request until the case is resolved. If a stay is not issued, you may begin to take action but you do so at your own risk. The final PCHB decision may affirm, deny or modify Ecology's decision, and you will be required to comply with the PCHB's decision.
11. Ecology will issue a *Superseding Certificate* to document the change in the water right certificate, once the

terms of the change approval have been complied with and the appropriate certificate filing fees have been paid. This is based on the information you submit, the field inspection, and compliance with any conditions for approval.

A *Superseding Permit* is issued when changing a right represented by an existing water right permit. If a claim is being changed, a *Certificate of Change* will be issued.

12. The Superseding Certificate, Superseding Permit or Certificate of Change is recorded at Ecology. A Superseding Certificate or Certificate of Change is also recorded at the county auditor's office in the county (or counties) where the project is located. The county auditor forwards the appropriate certificate to you. Like the original Certificate of Water Right, the Superseding Certificate becomes the legal record of the water right.

Other approaches to the change application process

In addition to the conventional application process outlined above, there are two other options for processing changes to existing water rights: *water conservancy boards* and *cost reimbursement contracting*. Both approaches were developed in recent years to provide applicants with timelier water right change decisions.

In 1997, the Legislature authorized the creation of *water conservancy boards* to enable the initial processing of water rights at the local level. This includes generating the Report of Examination. All water conservancy board decisions are ultimately reviewed and affirmed, reversed, or modified by Ecology. For more information on conservancy boards, contact a regional office or visit Ecology's website (address below).

A second option is to pay the costs of processing the application yourself. This approach is known as *cost*

reimbursement contracting. You must also pay the processing costs for any other water right change applications in line ahead of yours that propose drawing from the same water source. (This is to comply with state water law, which requires applications to be processed in the order they are received.)

Under the terms of an applicant-initiated cost reimbursement arrangement, you enter into an agreement with Ecology to pay the department's cost of hiring, managing and overseeing an independent consultant. The consultant then handles the routine and technical evaluation and processing work. Final decisions are still made by Ecology.

Note: Applications for a change of place of use may result in a potential Real Estate Excise Tax liability for the seller of the water right. For further information please contact the Department of Revenue at (360) 570-3265 or through the internet at <http://dor.wa.gov>.

For more information: If you have questions about changes to an existing water right, or would like to request an Application for Change/Transfer of Water Right, contact the regional or field office nearest you:

Northwest Regional Office
3190 - 160th Avenue SE
Bellevue, WA 98008-5452
(425) 649-7000

Southwest Regional Office
P.O. Box 47775
Olympia, WA 98504-7775
(360) 407-6300

Central Regional Office
15 W. Yakima Ave., Suite 200
Yakima, WA 98902-3452
(509) 575-2490

Vancouver Field Office
2108 Grand Boulevard
Vancouver, WA 98661-4622
(360) 690-7171

Eastern Regional Office
N. 4601 Monroe
Spokane, WA 99205-1295
(509) 329-3400

Bellingham Field Office
1204 Railroad Ave., Suite 200
Bellingham, WA 98225
(360) 738-6250

On-line information and resources:

Conservancy Boards: http://www.ecy.wa.gov/programs/wr/conservancy_boards/cb-home.html

Change Application forms: <http://www.ecy.wa.gov/biblio/ecy040197.html>

Instructions for Completing an Application for Change or Transfer of a Water Right: <http://www.ecy.wa.gov/biblio/ecy040197a.html>.

Assignment forms: "Assignment of Application or Permit to Appropriate of Store Water" form: <http://www.ecy.wa.gov/biblio/ecy040161.html>

Claim amendments are handled under a separate process. "Amended Claim for Water Right" form: <http://www.ecy.wa.gov/biblio/ecy0406.html>

This publication, and others about water rights, is available on-line at www.ecy.wa.gov/programs/wr/wrhome.html to view,

